

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
EASTERN DIVISION**

Civil Action No. 4:11-CV-00094-BO

BRUCE BANNISTER; MAX DUTTON;  
and MARION TOWLES;

Towles,

vs.

WAL-MART STORES EAST, L.P.,

Defendant.

**APPENDIX TO DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT REGARDING MAX  
DUTTON'S CLAIMS**

**G-4**

**Declaration of Adoncia Span Exhibit 4**

Store 2000 Recap Findings by A. Spann and M. DeBarros (August 2009)

## Store 2000 Recap

Investigator's Name and Position:  
Adoncia Spann, Marie De Barros

Conclusion (substantiated, unsubstantiated, substantiated not as alleged etc.):

- Invoice associate Theresa Shanefelter Carries keys to the entire store and answers calls for Max Dutton SM.
- Theresa Shanefelter has Max Dutton's user ID and password to check his email, update her punches in time and attendance.
- Theresa S. holds store meetings in Max's absence as she would be acting on his behalf.
- Max and Theresa S. eat lunch together several days a week.
- Max and Sammy have told associates in the meetings after Eric L. became the MM that "We are all in the service now and they are a Platoon and had to salute.
- After Tracey Battle and Dawanna interviewed associates in Store 2000 Max interrogated Marie in accounting about what was said and what happened. Max states to Marie and Debbie that Kim Grant, Diane in D-34, Tracey Battle and Dawanna were trying to get him fired. 6/15/2009
- Max instructed Debbie Gibson to clock in associate Richard Helms and he was not at the store so Max could do his CBL for him due to it being late. 6/18/2009
- Max interrogates Debbie Gibson about what was said in the investigation. She refused to answer his questions so he left the room and slammed the door as he left. 7/6/2009
- Max stopped Debbie Gibson in vestibule as she was coming to work to discuss Tracy Helton's attendance issues when she was off the clock. 7/17/2009
- On 4/21/2009 the store was doing a UE evaluation process. Debbie Gibson was responsible for doing the people section. Max instructed Debbie Gibson. To put all yes' Debbie Gibson said "No". Max told Debbie Gibson that if she did not put all yes' she would no longer be part of the team.

- There are several instances on the time archive that Theresa Shanefelter's time had been updated with Max's user ID. Debbie Gibson is sure Theresa Shanefelter updated her own time under Max's sign on 6/1/2009.
- Beach Days fund Raiser Eric Litchfield gave direction for 1 day and Max Dutton continued for 3 days. 6/14/2009.
- On 6/12/2009 Theresa Shanefelter gave Debbie Gibson direction not to talk to Kim Grant about anything. Theresa Shanefelter said that since Kim Grant had talked to Tracey Battle and Dawanna that she would have to "beat her ass".
- 4/4/2009 Max Dutton took a customer call in Personnel in front of Debbie Gibson. When Max got done he slammed the phone and exclaimed "That Bitch" Max stepped outside her door where Sammy the assistant manager was working and told him about the call. He asks Sammy "Doesn't that woman go to your church Sammy".
- Max has not done the new hiring process, Sammy does the job offers and Max requires the CSM's to do there hiring for the whole process.
- On 3/13/2009 Theresa Shanefelter gives Max a private birthday party at the store in his office. The associates were upset with this especially when he left early then left Theresa Shanefelter in charge of the store.
- Sheila C. in the DSD area covers Theresa's S. job in Invoicing so she will be available to do things for Max. 3/17/2009.
- 3/26/2009 Sammy Max and Theresa S. meet at the Subway at 8am which occurs quite regularly.
- 2/21/2009 Max sends Debbie G. and Theresa S. to Tonya Moore's house to talk her into not quitting and to get back to the store before noon. When they returned and told him she said no. His response was "Only the strong survive".
- 2/25/2009 Jacqueline A. told Debbie Gibson that Max sent Neil? Assistant Manager to her house to fire her once.
- 3/6/2009 Theresa S. regularly takes notes for Max during Market conference calls.
- 3/10/2009 Associate James Mylander went from FT status to PT status therefore lost his vacation time in the process. Max told him he would get them back for him and instructed Debbie G. to give them to him, she refused and Max threatened Debbie G. with this for months and tried to get other managers (Tony Taylor) to do it for him. Debbie G. states he has been unsuccessful with this to her knowledge.

- 4/2/2009 Max Threatens dept. Mgr. jobs in meeting due to conditions. But he refuses to answer questions or give direction to fix.
- 5/27/2009 during a meeting at Subway with Max, Tracy Helton and Debbie Gibson, Max asks about an email Tracey Battle had sent concerning Assistant managers. After reading it Max looks at Debbie G. and asks "Is she on Drugs" Referring to Tracey Battle.
- After Kim Grant talked to Tracey Battle and Dawanna, Max Approached Kim Grant and ask her if she talked about him and what they had ask her about him.
- The store is clearly not on CMW processes like new hiring process, Max is not doing job offers or the panel interviews are not taking place. Associate and management interaction with the customers not acceptable.
- IMS and backroom process is not being executed to company expectation.
- Scheduling process had not been updated to reflect summer opening hours and Max is not reviewing schedules for accuracy.
- Debbie Gibson was told by Max, "the reason for this audit was because Tracey Battle and Dawanna completed the investigation incorrectly and would be terminated" so she needed to make sure she said positive things about the store.
- Max has said in front of Debbie Gibson and Theresa Shanefelter "Lets go and threaten some dept. manager some more".
- Max threatens assistant mangers and department managers that Eric L. is going to come in with his gun and the red dot target is going to be on their head.
- Max has told Debbie Gibson that there are people coming to his house and discussing business like who does not want him in the store....
- Max has said the market team is Lazy and stupid, we are not to take direction from them they don't have a clue as how to run the market. He has said this in front of Sammy and Theresa S.
- When the store participated in the March of Dimes or relay for life Max had the associates passing out cuzie cups with Vote for max Dutton for commissioner of Dare County.
- Debbie says Max ask Melissa from Coppertone for a donation for CMN. Because Melissa asks Debbie Gibson How much she should ask for from her boss. Debbie G. said she didn't know and wanted nothing to do with it. She went to Max and Coppertone sent a check.

- Max said he needed to train Eric Litchfield as he knows nothing about being a MM.
- Max and Sammy have stood at the front of the store and saluted one another, making fun of Eric the new MM.
- Max told Debbie G. that Turner in Greeneville store called him and said that he was getting a code red investigation.
- There was an assistant manager that was so mistreated she walked out. Max drew pictures of her and made fun of her because she was a vegetarian. Max said she was doing too many drugs and drank all the time.
- Art Glidden comes into the wal-mart store to do fund raising for CMN.
- Theresa S. in invoice made up her own business cards to help with vendors to get donations.
- Customer Mrs. Turner came in on 8/19 to site to store and wanted a refund on an item that was in transit to the store. Max told Tracy Helton to take care of it and Tracy wouldn't due to not being procedure. Max took the customers information and she believes he did it anyway.

Basis of Conclusion (name of interviewees and statement summary, video, documents, etc) including dates of events:

- Due to statements taken from Kim Grant, Debbie Gibson, Diane Harris, Tracy Helton We believe the following violations have occurred:
- Retaliation, Threats and intimidation due to associates making statements about the store manager in an investigation setting.
- Threats and intimidation due to associates not doing as he asks in compliance situations.
- An hourly associate Theresa S. carrying management keys to the store and having the store managers user id and password.
- Theresa S. time being corrected by Max when he doesn't do it for any other associate.
- Max having lunch with an hourly associate Theresa S. in an ongoing manner.
- Max Makes negative comments about the market team in front of hourly associates.
- Talking to hourly associates off the clock and not compensating them for the time.

- Requesting associates falsify documents to make him and the store look better than they are at the time.

Applicable Policies, if any:

- AP-05 Key and Door controls
- GE-01 Statement of ethics- Intentional Dishonesty, Non- Retaliation, Wage and Hour, Gifts and Entertainment PG16 P. 2, Personal relationships PG 17, political involvement PG 28,
- IS-01 Access Control
- PD-30 Rude abusive behavior toward an associate Gross Misconduct
- PD-30 Harassment/Inappropriate conduct
- PD-43 Working off the clock
- PD-48 Workplace violence/ Intimidation
- Statement of ethics-Showing Favor to one associate over another.

Action Taken, if any:

No action taken at this time. Recommendation is to Terminate, based on statements and the evidence that Max Dutton:

- Manages through Intimidation.
- Does not protect company assets by securing his password and Keys to the building.
- Has been found to solicit items from vendors to raise money in the store.
- Had associates campaign for him as they thought they were volunteering for Relay for life walk only.
- Rude treatment as he has slammed doors and made negative comments to and in front of hourly associates.
- Has interrogated associates about there statements during an investigation.